

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

NOV - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the) CC Docket No. 96-128
Pay Telephone Reclassifications)
and Compensation Provisions of the)
Telecommunications Act of 1996)

REPLY COMMENTS OF ITA

The International Telecard Association ("ITA"),¹ by its attorneys, respectfully submits these reply comments in response to the Commission's public notice² of three petitions that seek waiver of the requirement, established in the *Payphone Orders*,³ that local exchange carriers ("LECs") and payphone service providers ("PSPs") transmit payphone-specific coding digits sufficient to allow real-time identification of "800" and access code calls originated from payphones.

DISCUSSION

The Commission should deny, at least in part, the requested waivers. Granting them will result in significant harm to prepaid card providers. In the absence of accurate real time ANI information digits identifying that a call was placed from a payphone, the Commission should not and cannot allow PSPs to assess payphone

¹ Members of the Association that are Regional Bell Operating Companies ("RBOCs") have not participated in the development of these comments.

² FCC Public Notice, *Pleading Cycle Established for Petitions to Waive Payphone Coding Digit Requirements*, CC Docket No. 96-128, DA 97-2274, Oct. 20, 1997 ("Public Notice").

³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Order on Reconsideration") (Continued on next page)

044

compensation charges on prepaid phone card providers. Unlike other interexchange carriers, prepaid providers cannot recover payphone charges from their customers *without the ability to identify payphone calls in real-time*. Prepaid card providers, operating in perhaps the most competitive market in today's telecommunications industry, will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Furthermore, the Commission must not only ensure that ANI information digits are being provided in real time, but that those digits are accurate. Failure to ensure both that ANI information digits are accurately provided will result in customer confusion, inappropriate charges to consumers, harm prepaid card providers financially and damage prepaid providers relationship with their customers.

In 1996 the Commission held that to be eligible for per-call compensation beginning October 7, 1997, each payphone is required to transmit specific payphone coding digits as part of their ANI that specifically identifies it as a payphone, not merely as a restricted line. Just one week before that deadline, however, several LEC and PSP organizations claimed that it would be technically infeasible to provide such ANI digits by the implementation date. Without public comment, the Bureau on its own motion granted a six-month waiver, until March 9, 1998, of the requirement "for those LECs and PSPs not yet able to provide transmission of such digits."⁴ ITA has separately

(collectively "Payphone Orders"), *vacated and remanded in part, Illinois Public Telecommunications Assoc. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997), Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997).

⁴ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order, CC Docket No. 96-128, rel. Oct. 7, 1997 ("Waiver Order").

petitioned the Commission to reconsider that Order on similar grounds to those expressed here.⁵

The Bureau's reasoning in its Waiver Order that determined that interexchange carriers would not be harmed by allowing per call compensation in the absence of real time ANI information identifying the payphone call, does not apply to prepaid card providers. Prepaid card services—which are growing exponentially and today account for an estimated 3.5 billion calls annually—are a unique and highly competitive market segment that must be considered completely separate from ordinary interexchange services. Unlike ordinary interexchange services, prepaid services have postalized rates and are paid for in advance, and thus do not involve any bill rendered to subscribers. As a consequence, the one and only time a prepaid card provider has to recover a payphone charge from its customer is at the time a payphone-originated call is placed.⁶

What this means is that the inability to identify and/or block payphone calls, in real time, will significantly harm prepaid card providers, impede competition in this burgeoning market, and injure consumers. Without the ability to identify payphone calls and recover PSP charges when a call is placed, prepaid card providers will be forced either to (a) pay for such costs out of their already thin profit margins, or (b) increase rates for consumers for all prepaid calls, whether or not payphone-originated. Neither result is in the public interest.

⁵ ITA Petition for Reconsideration of the Bureau's October 7, 1997 Waiver Order, filed Nov. 6, 1997.

⁶ With payphone-specific ANIs, prepaid providers would be in a position to provide a customized announcement (with appropriate tariff modifications as necessary) to customers, disclosing
(Continued on next page)

In addition to harms caused by the unavailability of ANI information digits in real time, prepaid card providers are also harmed when LECs provide inaccurate ANI information digits. For example, at least one LEC is sending ANI information digits that indicate a call has been placed from a payphone when the call has actually been placed from a residential line with toll restrictions. Believing that the call has been provided from a payphone, a prepaid provider may play an announcement to advise its customer that an additional \$0.284 payphone charge will be deducted from their card even though the call is made from a residential line. This has already lead to numerous customer complaints and harmed prepaid card providers relationships with their customers. In addition it directly harms consumers who unknowingly will pay payphone charges, even though their calls are placed from a residential line. Therefore, the Commission must not only ensure that ANI information digits are provided, but that they are the correct ones before enabling PSPs to collect per call compensation.

Given the highly competitive nature of the prepaid card industry, no prepaid card providers will be able to absorb charges of 28.4 cents per call and have their products remain economically viable. Many of the smaller providers and new entrants attracted to this market, where entry costs and barriers are very low, will be driven out of business. Moreover, because per-minute rates for cards already in circulation cannot be changed, prepaid providers will be forced to immediately increase per-minute rates, even higher than the average pro rate portion of the 28.4 cents, for prepaid calls whether or not originated from payphones. This increase in prices will necessarily be

that the card will be "decremented" a particular value or number of "units" to recover the payphone-assessed per-call charge. In the absence of real-time information, this is plainly not possible.

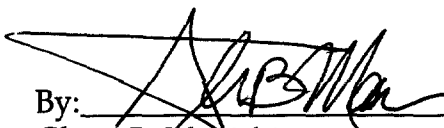
imposed on consumers who would otherwise have the choice of avoiding payphone charges by using a non-payphone with their prepaid card. In sum, the lack of real-time ANI information will substantially injure competition, prepaid providers and consumers.

The Bureau's assumption in its Waiver Order that a waiver of the LEC and PSP requirement to deliver ANI information digits "will not significantly harm any parties" is wrong. Prepaid providers will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Consumers of these innovative services—including those calling from non-payphones—will necessarily face higher rates as well. ITA therefore urges the Commission to deny these waivers and preclude PSPs from assessing any per-call compensation charges on providers of prepaid services until accurate, real time information is available for prepaid carriers to identify payphone calls and recover per-call payphone compensation charges from their customers. Only in this way can the interests of providers and consumers of prepaid card services be protected in light of the unique nature of prepaid services.

CONCLUSION

For all these reasons, the Commission should deny the waiver requests and preclude PSPs from assessing any per-call compensation charges on providers of prepaid card services until payphone-specific coding digits are accurately transmitted from each payphone, and are not inaccurately transmitted from other types of phones.

Respectfully submitted,


By: _____

Glenn B. Martishin

Michael D. Specht, Senior Engineer
Blumenfeld & Cohen - Technology Law Group
1615 M Street, N.W., Suite 700
Washington, D.C. 20036
202.955.6300
202.955.6460 fax

Counsel for the International Telecard Association

Dated: November 6, 1997

CERTIFICATE OF SERVICE
FCC DOCKET NO. 96-128

I, Lorren Wilkins, do hereby certify on this 6th day of November, 1997, that I have served a copy of the foregoing Reply Comments of International Telecard Association via United States first class mail, postage prepaid, to the parties below.



Lorren Wilkins

Michael K. Kellogg
Jeffrey A. Lamken
Kevin J. Cameron
Kellogg, Huber, Hansen, Todd & Evans
1301 K Street, N.W. Suite 1000W
Washington, D.C. 20005

Richard A. Askoff
Donna A. DiMartino
NECA
100 South Jefferson Road
Whippany, NJ 07981

Roy L. Morris
1990 M Street, N.W., Suite 500
Washington, D.C. 20036
Counsel for Frontier

Michael Shortley
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

William H. Smith, Jr.
Bureau of Rate and Safety
Iowa Utilities Board
Lucas State Office Building
Des Moines, Iowa 50319

Patricia A. Hahn
1775 K Street, N.W., Suite 500
Washington, DC 20006
Counsel for Airports Council International-
North America

Charles H. Kennedy
Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Washington, DC 20006-1888
Counsel for Airports Council International-
North America

Joe D. Edge
Sue W. Bladek
Drinker, Biddle & Reath
901 15th Street, N.W.
Washington, DC 20005

Kevin Maher
American Hotel & Motel Association
Suite 600
1201 New York Avenue, N.W.
Washington, DC 20005-3917

C. Douglas McKeever
InVision Telecom, Inc.
Suite 118
1150 Northmeadow Parkway
Roswell, GA 30076

Joseph Kelley
Flying J Inc.
P.O. Box 678
Brigham City, Utah 84302-0678

David Gorin
President
Nat'l Ass'n of RV Parks & Campgrounds
Suite 201
8605 Westwood Center Drive
Vienna, VA 22182-2231

Paul J. Berman
Alan C. Weizel
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044-7566

ITS
1231 20th Street, N.W.
Washington, DC 20554

Mark J. Golden
Personal Communications Industry Ass'n
500 Montgomery Street Suite 700
Alexandria, VA 22314-1561

Pat Wood, III
Robert W. Gee
Judy Walsh
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

E.M. Thurmond, A.A.E.
Yuma International Airport
2191 E. 32nd Street
Yuma, AZ 85365

Thomas J. MacBride, Jr.
Kathryn A. Fugere
505 Sansome Street, Suite 900
San Francisco, CA 94111
Counsel for CA Ass'n of Long Distance
Tel. Cos.

Clifton Craig, Jr., President
South Carolina Public Communications
Ass'n
1132 S. Center Road
Darlington, SC 29532

Charles M. Barclay, A.A.E.
President
American Association of Airport
Executives
4212 King Street
Alexandria, VA 22302

Susan Drombetta
Manager, Rates and Tariffs
Scherers Communications Group, Inc.
575 Scherers Court
Worthington, OH 43085

Katherine M. Holden
Stephen J. Rosen
Wiley, Rein, & Feilding
1776 K Street, N.W.
Washington, DC 20006
Counsel for Personal Communications

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro Morin & Oshinsky
L.L.P.
2101 L Street, N.W.
Washington, DC 20037-1526

Judith St. Ledger-Roty
Enrico C. Soriano
Wendy I. Kirchick
Reed Smith Shaw & McClay
1301 K Street, N.W., Suite 1100E
Washington, DC 20005-3317
Counsel for Intellicall Cos. and Paging
Network, Inc.

John F. Beach, P.A.
1400 Main Street, Suite 1207
P.O. Box 444
Columbia, SC 29202-0444
Counsel for SC Public Communications
Ass'n

Willard C. Reine
314 East High Street
Jefferson City, MO 65101
Counsel for Midwest Independent Coin
Payphone Association

William R. Ralls
Leland R. Rosier
118 West Ottawa Street
Lansing, MI 48933
Counsel for Michigan Pay Tel. Association

Michael H. Ward
John F. Ward, Jr.
Henry T. Kelley
O'Keefe, Ashenden, Lyons & Ward
30 N. LaSalle Street, Suite 4100
Chicago, IL 60602

Ernest G. Johnson
Cece Wood
Maribeth D. Snapp
Oklahoma Corp. Commission
P.O. Box 25000-2000
Oklahoma City, OK 73152-2000

Rachel J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22139

Bruce W. Renard
Peoples Telephone Co., Inc.
2300 N.W. 89th Place
Miami, FL 33172

Mary E. Burgess
State of NY Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1390

Mary McDermott
Linda Kent
Charles D. Cosson
United States Tel. Association
1401 H Street, N.W. Suite 600
Washington, DC 20005

Martin A. Mattes
Graham & James
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Counsel for CA Payphone Association

Blossom A. Peretz
NJ Div. of Ratepayer Advocate
31 Clinton Street, 12th Floor
Newark, NJ 07101

Cynthia B. Miller
Florida PSC
Capital Circle Office Center
2540 Shummard Oak Blvd.
Tallahassee, FL 32399-0850

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
Suite 1300
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
Counsel for Peoples Telephone Co.

Peter Arth, Jr.
Edward W. O'Neill
Patrick S. Berdge
505 Van Ness Avenue
San Francisco, CA 94102
Counsel for PUC of CA

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
J. Paul Walters, Jr.
Southwestern Bell Tel. Co.
One Bell Center, Room 3536
St. Louis, MO 63101

Sondra J. Tomlinson
US West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, DC 20036

M. Robert Sunderland
Theodore R. Kingsley
Bellsouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Martin Cintron
Salvador Uy
Gary S. Lutzker
NY City Dept. of Info. and
Telecommunications
Third Floor
11 Metrotech Center
Brooklyn, NY 11201

Glenn Stehle
Call West Communications, Inc.
701 N. St. Mary's
San Antonio, TX 78206

W. Dewey Clower
NATSO, Inc.
1199 N. Fairfax Street, Suite 801
Alexandria, VA 22313-1285

Derek Blake
Admirals Club
P.O. Box 619280
Dallas/Forth Worth Airport, TX
75261-9280

E. Barclay Jackson
New Hampshire PUC
8 Old Suncook Road
Concord, NH 03301-7310

Hank Smith
Independent Technologies, Inc.
11422 Miracle Hills Drive
Omaha, NE 68154

Teresa Marrero
Teleport Communications Group, Inc.
Two Teleport Drive Suite 300
Staten Island, NY 10301

Roger B. Skrypczak
Wisconsin Public Communications Ass'n
W6246 County Trunk BB
Suite B
Appleton, WI 54915

Willard C. Reine
314 East High Street
Jefferson City, MO 65101
Counsel for Midwest Independent Coin
Payphone Association

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

Kevin E. Cox
Dallas/Fort Worth Int'l Airport
3200 East Airfield Drive
DFW Airport, Texas 75261-9428

Bryan Peterson
Kampgrounds of America, Inc.
P.O. Box 30668
Billings, Montana 59114

Joel B. Shifman
Maine PUC
242 State St. House Station No. 18
Augusta, ME 04333-0018

David Kaufman
New Mexico State Corp. Commission
P.O. Box 1269
Santa Fe, New Mexico 87504-1269

Ann Cassidy
One Call Communications, Inc.
801 Congressional Blvd.
Carmel, Indiana 46032

Actel
P.O. Box 391
Cedar Knolls, NJ 07927

Newton M. Galloway
113 Concord Street
Zebulon, GA 30295
Counsel for Georgia Public
Communications Association

John D. Solomon, A.A.E.
601 Brasilia Avenue
P.O. Box 20047
Kansas City, MO 64195
Counsel for the City of Kansas City, MO

James A. Thelen
The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, Ohio 44195

Robert M. Brill, Esq.
757 3rd Avenue, 12th Floor
New York, NY 10017

Angela B. Green
Florida Public Telecom Association, Inc.
125 S. Gadsden Street, Suite 200
Tallahassee, FL 32301

David Cosson
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037
Counsel for National Telephone
Cooperative Association

J. Christopher Dance
Kerry Tassopoulos
Excell Telecommunications
20th Floor
8750 North Central Expressway
Dallas, Texas 75231

E. Ashton Johnston
Paul, Hastings, Janofsky & Walker
10th Floor
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400
Counsel for Arch Communications

Charles C. Hunter
Hunter & Mow, P.C.
1620 I Street, N.W., Suite 701
Washington, DC 20006
Counsel for Telecommunications Resellers
Ass'n

Robert E. Cohn
Alexander Van der Bellen
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, DC 20037
Counsel for City of Kansas City, MO

Joe D. Edge
Sue W. Bladek
Drinker, Biddle & Reath
901 15th Street, N.W.
Washington, DC 20005
Counsel for Puerto Rico Tel.Co.

Edward C. Addison
Virginia State Corporation Commission
1300 East Main Street 9th Floor
P.O. Box 1197
Richmond, VA 23218

Robert C. Caprye
GVNW, INC/MANAGEMENT
7125 S.W. Hampton Street
Portland, OR 97223

Michell F. Brecher
Fleischman & Walsh, L.L.P.
1400 16th Street, N.W.
Washington, DC 20036
Counsel for Oncor Communications

Thomas K. Crowe
Suite 800
2300 M Street, N.W.
Washington, DC 20036
Counsel for Excel

C. Douglas McKeever
Communications Central, Inc.
1150 Northmeadow Pkwy., Suite 118
Roswell, Georgia 30076

Genevieve Morelli
CompTel
Suite 220
1140 Connecticut Avenue, N.W.
Washington, DC 20036

Danny E. Adams
Steven A. Augustino
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036

Catherine R. Sloan
Richard C. Fruchterman
Richard S. Whitt
LDDS Worldcom
Suite 400
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Mary J. Sisak
Donald J. Elardo
MCI Telecommunications
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Terrence J. Buda
Veronica A. Smith
John F. Povilaitis
P.O. Box 3265
Harrisburg, PA 17105-3265
Counsel for PA Public Utility Commission

Rose Crellin
Greg Lipscomb
Michael Carowitz
Enforcement Division
Room 6008
2025 M Street, N.W.
Washington, DC 20554

Alan N. Baker
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196
Counsel for Ameritech

Douglas F. Brent
LDDS Worldcom
9300 Shelbyville Road, Suite 700
Louisville, Kentucky 40222

David J. Gudino
GTE
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Mark C. Rosenblum
Peter H. Jacoby
Richard H. Rubin
AT&T
Room 3244J1
295 North Maple Avenue
Basking Ridge, NJ 07920